



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

November 7, 1994

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Richard Gold, M.D.  
223 Route 59  
Monsey, New York 10952

Jean Bresler, Esq.  
NYS Dept. of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Nathan Dembin, Esq.  
225 Broadway, Suite 1905  
New York, New York 10001

### **RE: In the Matter of Richard Gold, M.D.**

Dear Dr. Gold, Ms. Bresler & Mr. Dembin :

Enclosed please find the Determination and Order (No. 94-128) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

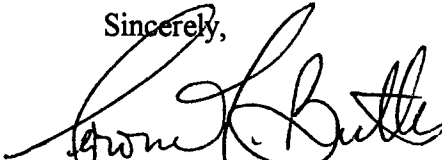
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 438  
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:

Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR  
PROFESSIONAL MEDICAL CONDUCT**

**IN THE MATTER  
OF  
RICHARD GOLD, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 94-128**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**<sup>1</sup> held deliberations on October 11, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) July 28, 1994 Determination finding Dr. Richard Gold (Respondent) guilty of professional misconduct. Both the Respondent and the Office of Professional Medical Conduct (Petitioner) requested the Review through Notices which the Board received on August 11, 1994 and August 16, 1994 respectively. James F. Horan served as Administrative Officer to the Review Board. Jean Bresler, Esq. filed a brief for the Petitioner, which the Review Board received on September 26, 1994 and a reply brief which the Board received on October 4, 1994. Nathan L. Dembin, Esq. filed a brief for the Respondent, which the Review Board received on September 26, 1994.

**SCOPE OF REVIEW**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

---

<sup>1</sup> Sumner Shapiro did not participate in this case.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board

### **HEARING COMMITTEE DETERMINATION**

The Petitioner charged the Respondent with moral unfitness in the practice of medicine and with professional misconduct in the practice of Psychiatry by engaging in physical contact of a sexual with his patients. The moral unfitness charge involved five patients, to whom the record refers by the initials A though E, to protect their privacy. The physical contact charge involved Patients A and D.

The Hearing Committee determined that the Respondent, a psychiatrist, engaged in sexual activity with Patients A, B, D and E. The Committee found that the Respondent had made sexual overtures to Patient C, but that the Patient had left the Respondent's office at that time and had never returned. Based upon their findings, the Committee determined that the Respondent was guilty of moral unfitness in the practice of medicine and sexual contact by a Psychiatrist. The Committee based their findings on the testimony of all five patients, whom the Committee found to be credible witnesses. The Committee did not believe the Respondent's denials of sexual relationships with the patients.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in New York State.

### **REQUESTS FOR REVIEW**

The Petitioner asks the Board to amend the Hearing Committee's Determination as to Patient E. The Petitioner notes that the Committee sustained the charge that the Respondent was guilty of moral unfitness in his contact with Patient E, but the Committee made no findings concerning Specification 7, which charged the Respondent with moral unfitness for having sexual contact with

the Patient. In the Hearing Committee Determination, the Committee found the Respondent guilty of moral unfitness involving Patient E, but did not make reference to Specification 7.

The Respondent challenges all the Committee's findings and conclusions. The Respondent asserts that legal errors permeated the hearing, invalidating the findings and mandating reversal of the Determination. The Respondent alleges legal errors in seven areas:

1. Violation of equitable principles of laches, unreasonable delay, in all the Patient cases, and, issue preclusion in the case of Patient A;
2. Prejudice due to amending the Statement of Charges following the hearing's commencement;
3. Denial of a fair hearing due to failure to provide written complaints, denial of essential medical records, unlawful use of testimony, the Committee's abdication of the fact finding role, disregard of expert testimony, denial of cross-examination, and denial of right of continuation;
4. Denial of records needed to prepare an adequate defense;
5. A substituting panel member's failure to affirm in writing that he read transcripts;
6. Failure to consider defense witnesses; and,
7. Findings and conclusions are not supported by the evidence.

The Respondent argues further, that even if the Review Board sustains the charges, that the revocation of the Respondent's license is unjust in view of several mitigating factors such as 1.) the Respondent's substantial contribution to medicine and 2.) the passage of time, over a decade, since the last allegation against the Respondent.

#### **REVIEW BOARD DETERMINATION**

The Review Board has considered the record and the briefs which counsel have submitted.

The Review Board will not review the alleged legal errors which the Respondent

raises in his Points 1 through 5 above. These allegations dealing with laches, issue preclusion, prejudice due to the amendment of charges, the denial of a fair hearing, denial of records and the substituted panel member's affirmation are procedural issues which are beyond our jurisdiction.

The Review Board votes to sustain the Hearing Committee's Determination finding Dr. Gold guilty of moral unfitness in the practice of medicine and sexual contact by a Psychiatrist with a patient. The Hearing Committee as finder of fact determined that all five patients were credible in their testimony and the Committee did not accept the Respondent's testimony in his own defense. The Committee's Findings, based on the evidence, that the Respondent had sexual relationships with four patients and made sexual overtures toward a fifth patient, are consistent with the Committee's Determination that the Respondent was guilty of moral unfitness in the practice of medicine and sexual contact by a psychiatrist with a patient.

The Board amends the Hearing Committee's Determination to sustain specifically the Seventh Specification in the Amended Statement of Charges. That Specification charged that the Respondent was guilty of moral unfitness in the practice of medicine arising from his sexual contact with Patient E. The Review Board sustains the Specification based upon the Committee's Findings of Fact 67 through 90, which appear at pages 12 through 15 in the Hearing Committee Determination. The Board amends the Hearing Committee Determination further, on page 2, to note that the list of hearing dates should include February 23 and February 28, 1994.

The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State. The Determination is consistent with the Committee's findings concerning the Respondent's sexual relationships with and sexual overtures toward his patients and the Penalty is appropriate in view of the repeated and serious nature of these offenses.

**ORDER**

**NOW**, based upon this Determination, the Review Board issues the following **ORDER**:

1. By a vote of 4-0, the Review Board **sustains** the Hearing Committee on Professional Medical Conduct's July 28, 1994 Determination finding Dr. Richard Gold guilty of professional misconduct.

2. The Review Board **amends** the Hearing Committee's Determination to correct the omission of certain hearing dates and to sustain the Seventh Specification, for the reasons which we state in this Determination.

3. By a vote of 4-0, the Review Board **sustains** the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State.

**ROBERT M. BRIBER**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

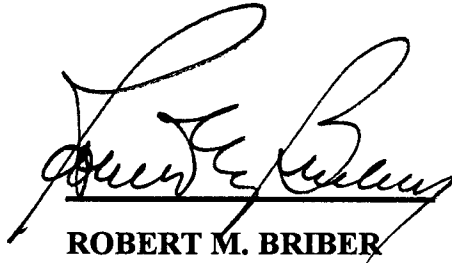
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF RICHARD GOLD, M.D.**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gold.

**DATED: Albany, New York**

11/5, 1994



**ROBERT M. BRIBER**



**IN THE MATTER OF RICHARD GOLD, M.D.**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gold.

**DATED: Brooklyn, New York**

\_\_\_\_\_, 1994

A handwritten signature in black ink, appearing to read "W. S. Price", is written over a solid horizontal line.

**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF RICHARD GOLD, M.D.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gold.

**DATED: Roslyn, New York**

June 5, 1994

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF RICHARD GOLD, M.D.**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gold,

**DATED:** Albany, New York

4 Nov, 1994

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a horizontal line.

**WILLIAM A. STEWART, M.D.**